

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**KIMBERLEY OWEN
INDIVIDUALLY, AND ON BEHALF
OF OTHERS SIMILARLY SITUATED
Plaintiff,**

versus

**HARRIS COUNTY, TEXAS
Defendant.**

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**NO. 4:07-cv-03273
JURY DEMANDED**

ORDER

Pending before the Court is Defendant Harris County's Motion for Judgment as a Matter of Law and Motion to Set Aside the Jury Verdict and/or Motion to Modify the Damage Award. **(Instrument No. 76).**

The Court HEREBY GRANTS Defendant's motion with respect to Plaintiff's damages award of \$18,000 for lost earnings/earnings capacity sustained in the past. As the Jury did not find that Plaintiff was terminated from her employment due to her gender, the Court holds that Plaintiff is not entitled to damages for lost earnings/earnings capacity.

The Court DENIES Defendant's motion with respect to the *Faragher/Ellerth* affirmative defense. Plaintiff brought a claim for hostile work environment, and she established at trial that a tangible employment action was taken against her. Accordingly, Defendant was not entitled to the *Faragher/Ellerth* affirmative defense. *Green v. Administrators of the Tulane Educational Fund*, 284 F.3d 642, 655 (5th Cir. 2002). Even if Defendant was entitled to the *Faragher/Ellerth* affirmative defense, the Court finds as a matter of law that Defendant failed to establish that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and Defendant failed

to establish that Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities.

The Court DENIES Defendant's motion with respect to Defendant's remaining arguments.

Accordingly, Defendant's Motion for Judgment as a Matter of Law and Motion to Set Aside the Jury Verdict and/or Motion to Modify the Damage Award is **GRANTED IN PART and DENIED IN PART. (Instrument No. 76).**

The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this the 17th day of June, 2009, at Houston, Texas.



VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE